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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ATLANTIS INFORMATION
TECHNOLOGY, GmbH,

Plaintiff,

v.

CA, INC.,

Defendant.

Civil Action No.
06-CV-3921 (JS-WDW)

**DEFENDANT CA, INC.'S RULE 56.1
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Rule 56.1 of the Local Rules for the Eastern District of New York and the Court's Individual Motion Practices IV(E)(1), Defendant CA, Inc. ("CA") respectfully submits this statement of undisputed material facts in support of its motion for partial summary judgment on Plaintiff Atlantis Information Technology, GmbH's ("Atlantis") claim for breach of contract.

1. CA and Atlantis entered into a Software License Agreement (the "SLA"), dated February 28, 1997. Declaration of Michael D. Schissel in Support of Defendant's Motion for Partial

Summary Judgment on Plaintiff's Claim for Breach of Contract, dated September 1, 2010 ("Schissel Decl."), Exh. A [Px 2¹].

2. In 2004, CA and Atlantis entered into a Settlement Agreement and a Third Amendment to the SLA. Schissel Decl. Exhs. B [Dx 26] and C [Dx 27].

3. CA was represented by attorney Alexander Arato and Atlantis was represented by attorneys Meinhard Erben and William O'Brien in connection with the negotiation and drafting of the Settlement Agreement and the Third Amendment. Schissel Decl. Exhs. D [Deposition of Alexander Arato, taken March 13, 2008 ("Arato Dep."), at 45:10-16] and E [Deposition of Meinhard Erben, taken February 13, 2008 ("Erben Dep."), at 9:19-23; 10: 8-19; 24:20-25:4].

4. In Paragraph 3 of the Settlement Agreement, CA and Atlantis released each other from all claims relating to the prior license agreements they had entered into, subject to the exceptions contained in Paragraph 4 of the Settlement Agreement. Schissel Decl. Exh. B [Dx 26 at ¶ 3].

5. Paragraph 4 of the Settlement Agreement granted exceptions to the release, including that Atlantis does not release CA for "any licensees and/or installations of the Products that have not been disclosed on any royalty report prepared by CA and delivered to Atlantis prior to June 30th, 2004." Schissel Decl. Exh. B [Dx 26 at ¶ 4].

6. The phrase "installations of the Products" in the exception to the release in the Settlement Agreement refers to when a copy of E/NAT is installed on a computer. Schissel Decl. Exhs. D [Arato Dep. at 145:5-10] and E [Erben Dep. at 61:15-24; 77:4-7].

¹ References to Plaintiff's Deposition Exhibits will be Px _____. References to Defendant's Deposition Exhibits will be Dx _____.

7. One provision of the Third Amendment provides: "In case a client uses the software on more than one (1) MACHINE, the following rules shall be applied: 1. The largest MACHINE on which the software is installed shall be used to calculate the basic fees (with 34% royalty). 2. For each additional MACHINE the additional royalties shall be of 20% (instead of 34%) of the 'G1' list price." Schissel Decl. Exh. C [Dx 27 at CA00000689].

8. The word "use" in the phrase "In case a client uses the software on more than one (1) MACHINE" in the Third Amendment refers to when a copy of E/NAT is installed on a computer. Schissel Decl. Exhs. E [Erben Dep. at 56:20-25] and F [Deposition of Atlantis's expert Dr. Steven Kursh, taken June 25, 2009, at 238:23-239:7].

Dated: New York, New York
September 1, 2010

ARNOLD & PORTER LLP

By: 

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